

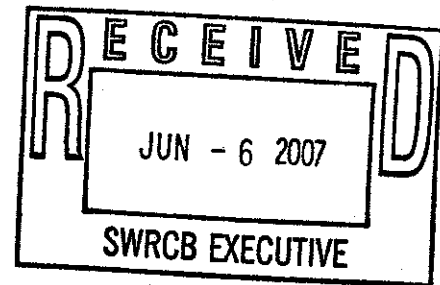


Community Clean Water Institute

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Ms. Tam Doduc, Chair
And members of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

June 6, 2007



Dear Ms. Tam Doduc and members of the Board,

Community Clean Water Institute submits in this letter comments and recommendations to the State Water Resources Control Board (Board) on its Policy on Water Rights Enforcement. Thank you for the opportunity to participate in this process.

Enforcement Provision Inclusion: We recommend the inclusion of enforcement provisions in the Board's AB 2121 policy. Strong, clear enforcement policy should also be expanded to protect the entire state, using the North Coast policy as a model. Many of our north coast streams are over appropriated to the detriment of our declining fish populations, yet illegal users go undeterred. There must be penalties in place to counteract the incentive to flout the law. Enforcement of water rights is the only way to protect instream flows, plain and simple.

In addition to the obvious harm to beneficial uses and instream flows illegal diversions cause, it is also harmful economically. When the laws are not enforced and businesses and homes are created on parcels with poor water tenure, uncertainty in land value occurs. Large vineyards have been put in on lands with no water or valid appropriative right. This is bad for business and encourages development where natural resources are unable to sustain it.

Watershed Compliance Inspections: The watershed compliance inspections are an efficient, systematic and fair tool that have shown to be useful in both enforcement and in understanding the water budget of each watershed. We encourage its use by the Division. Watersheds should be prioritized for compliance inspection by their biological significance, flow impairment status and when there is reason to suspect high numbers or volumes of illegal diversions.

Voluntary Compliance: Voluntary Compliance is in most cases inappropriate and should not be allowed. Voluntary compliance at best puts beneficial uses at risk and at worst rewards abusers. Voluntary Compliance is one of the major reasons illegal diversions are so rampant. When caught, many are rewarded with a permit, with no consequences. Sometimes the application simply sits for years on end at the Division, while the illegal user continues to divert without authorization. Many landowners today just divert what

they want without applying for a permit, knowing that in the remote chance that they do get caught, there will be no consequences. The only time voluntary compliance would be appropriate is when a legal user violates terms of their permit or license, and then only at the discretion of the Division.

Enforcement Action on Applicants and Petitioners: The wait for a permit can be onerous on a petitioner or applicant, prompting some to start diverting long before their application is processed. Instead of putting the Public Trust and senior, legal user's at risk by diverting while still in the application process, the Division must process applications in a reasonable amount of time. However the petitioners and applicants should not be allowed to divert until they have a permit under any circumstances, and enforcement should proceed. Those illegal diverters who never intended to apply for a right however got "caught" and put in an application should receive the heaviest penalty. The Division should prioritize those petitions for change which are simple and do not pose a threat, such as moving the point of diversion within the same stretch of stream, Municipalities or emergency petitions for change.

Specific Enforcement Action Issuance: All enforcement actions should be used by the Division as tools to ensure the law is followed. This includes Cease and Desist orders, Administrative Civil Liability, referral to the Attorney General and revocation of permits.

Cease and Desist: The C&D should always accompany a finding of no valid water right. After complying with a C&D, those wishing to pursue a water right may apply for one. Compliance must be shown by the illegal user through disconnection of pipes, bypass of reservoir or other method.

Cease and Desist orders should require permanent removal of a diversion facility if the facility even when not diverting is causing harm or if the diversion cannot be stopped without removal of the facility. The Facility should also be permanently removed if the illegal diverter is unable to prove that the diversion of water has ceased.

Administrative Civil Liability: The full \$500 per day and \$1000 per day for C&D violations should be levied in ACL cases. The fine must be high enough to discourage illegal actions.

Attorney General Referral: This should always be at the discretion of the Division, however some situations may warrant referral in particular. Should a permitted user claim damages due to the illegal user, referral may be warranted. Also the Division may consider referring cases where significant damage to beneficial uses or the Public Trust occurred due to an illegal diversion. Referrals may be made as well when ACL and C&D are ignored or do not stop the diversion.

Water Right Revocation due to non-payment: Water right revocation should be used due to non-payment. The five year time period now used is reasonable, though the Division should have some discretion in this. Water rights should be revoked in other cases as well, including the finding of over appropriation on a particular stream and changing conditions that decrease stream flow such as global warming, drought, or in the

case of the Russian River decrease Eel River diversion. A repeat violator of permit terms should have their permit revoked at Division discretion.

Illegal User Application Cancellation - Diligence to Comply: All illegal users should have applications canceled. Illegal users should end all diversion before putting in an application for appropriative rights. The only appropriate exception to this would be riparian users who had failed to register their appropriation. It is unfortunate that people begin projects like home building and vineyard development before securing a source of water, but this is something that the division must be firm on. Without clear rules the Division quickly loses control over surface water resources, as seen in the state of stream flow impairment and the number of illegal diversions today.

CCWI recently reported an illegal user to the Division. No cease and desist or ACL or dismantling of the diversion facility were ordered. Instead the illegal user was offered a Small Domestic Use Permit, which is a rubber stamp permit that receives no CEQA, public comment or staff investigation. CCWI did investigate, and proved that the diversion did not qualify as a SDU. The diverter was issued a letter by the Division asking him to stop the diversion. Unfortunately the letter came with no follow up, no site visit, and no consequences for non-compliance. The diversion is still in place, and the diverter actually went on to grant himself water rights in a property deed a year later. The harm to legal users, fish and wildlife continues with impunity.

On hearing that a SDU permit was offered, local officials and Regional Board staff expressed surprise that any rights to surface water were still being issued on such a water scarce creek. There seems to be some antagonism between the Division and Fish and Game, and the Regional Water Boards are completely left out of the water rights process. These relationships need fostering. Fish & Game and the Regional Board have local knowledge of watershed conditions that the Division needs to make the best decisions.

Most of the applications today in Sonoma County are for wine grapes that have illegally withdrawn from creeks or new, planned wine grapes, which are lucrative businesses. Others are properties that have not been developed because of the lack of a water supply, which now someone wants to try and develop. Asking these users to wait for permission, or to find another water source that is not surface water, is not unreasonable. Further, there are rooftop rainwater collection systems and trucked water for any landowner wishing to build a home or business on land that lacks ground or appropriate surface water. Water is a shared resource that must by law be put to beneficial uses and protect fish and wildlife.

Thank you for taking public input on this issue. The lack of enforcement from the Water Rights Division is an extremely important problem that has contributed to the decline in fisheries and water quality in our streams, and has harmed senior, legal users.

Sincerely,

Sarah Shaeffer
Program Director